

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2014

Bill Number: H.526

Name of Bill: Shoreland Protection

Who introduced this bill? Committee on Fish, Wildlife and Water Resources

Author of Bill Review: Susan Warren

Agency/Dept. Reviewing Bill: DEC

Date of Bill Review: 2/19/2014

Status (check one): ☐ Upon Introduction ☐ As passed by 1st body ☒ As passed by both bodies ☐ Fiscal

Recommended Position:

☒ Support ☐ Oppose ☐ Remain Neutral ☐ Support with modifications identified in #8 below

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*

This bill addresses "conservation and development" of shorelands. It authorizes the state to implement a regulatory program to manage "impervious surfaces and cleared areas" within the shoreland area. The bill's findings and purpose correctly identify the variety of threats to and values of Vermont's shorelands, including water quality protection, aquatic habitat protection, shoreline stability, flood resilience and the economic benefits of healthy lakes. The jurisdiction of the bill covers land within 250 feet of the mean water level of a lake. The bill includes jurisdiction over all lakes over 10 acres, except for private ponds, which is defined specifically for this bill. Unlike the bill that passed the House, the Senate bill sets shoreland management standards in the bill that would be implemented beginning July 1, 2014. The bill would give ANR jurisdiction over shorelands in towns without an adequately protective shoreland by-law, although other aspects of town ordinances unrelated to regulation of impervious or cleared areas would remain under the jurisdiction of the town. If a municipality has a shoreland ordinance that provides standards that are "at least as stringent as" by being "functionally equivalent" to the standards in the bill, the authority to administer shoreland protection standards can be delegated to the town for review of development in the shoreland protective area. A delegation agreement must be signed between the town and ANR that includes expectations for administration of the municipal ordinance and conditions under which the delegation can be revoked. Areas within a municipality that are established industrial or urban areas do not need a state shoreland permit. Certain activities do not require a permit under the shoreland protection program including agriculture, silviculture, repair or maintenance of state or municipal roads, construction or maintenance of utility lines, stormwater (when already under the jurisdiction of the state Stormwater Rules), wastewater and potable water systems. The bill also avoids duplicate permitting by exempting any projects that undergo review under Act 250 criteria of (a)(1)(f) "shorelines." Shoreland management standards contained in the bill include 1) protection of existing natural vegetation within 100 feet of the mean water level and guidelines for management of that vegetation that allow some thinning, pruning and tree removal to allow access to the shore, 2) a maximum of 20% impervious area per lot, and 3) a maximum of 40% cleared area per lot. Additional language in the bill allows adjusting the standards to meet site specific conditions, pre-existing small lots and pre-existing development that cannot meet the standards.

- 2. Is there a need for this bill?** *Please explain why or why not.* There is substantial need for this bill as Vermont's lakes are highly threatened by poor shoreland development. Currently in Vermont the vast majority of shoreland development does not fall under any protective guidelines and involves the complete clearing of vegetation and the establishment of lawns to the water's edge. Small camps are often replaced by large homes that cover a much higher percentage of the lot. Numerous studies, including some done in Vermont, indicate such a style of development degrades water quality conditions (especially in shallow water), recreational uses, aquatic habitat, increases shoreline erosion and lowers property values. Increased runoff and cleared land result in significantly more phosphorus and sediment runoff into lakes. With the loss of the diverse and dense root structure that trees and shrubs provide, lake shorelines subject to erosion and are highly vulnerable to damage during flood events. Finally, the critical role wooded shoreland play in the health of aquatic habitat is substantial. Currently, most shoreland development undergoes no review. Less than 20% of towns have town zoning ordinances that provide even minimal environmental and lake protection. The vast majority of shoreland development does not fall under the jurisdiction of either Act 250 or the Stormwater Rules. Without requirements, most people develop shorelands in a manner that negatively impacts the lake. Vermont's lakes are undergoing degradation of aquatic habitat and water quality as a result. Healthy lakes are needed to not only support the natural landscape, but to protect recreational values, the tourism economy and property values.
- 3. What are likely to be the fiscal and programmatic implications of this bill for this Department?**
A new regulatory program would require staff to administer it. The number of staff needed would depend on the jurisdiction and complexity of the statute, however, estimates indicate that the fee schedule identified in the bill would cover the cost of 3 staff persons. Implementing the bill will require coordination with other DEC permit programs, especially Wastewater and Potable Water Supplies (includes septic system permitting) to ensure both programs' standards are met.
- 4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?** Other departments in state government will have to apply for a permit under certain circumstances. State parks and fishing access areas in particular will have new requirements. Both entities are already working with the Lakes Program to evaluate and reduce the impact of existing uses in the shoreland on lake resources. Existing state roads would be "grandfathered" but would need permit coverage when expansions are proposed. Vtrans has not indicated opposition to this provision. The draft bill states that agricultural and silvicultural activities must comply with agency rules, i.e. the AAPs and AMPs.
- 5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it?** *(for example: public, municipalities, organizations, business, regulated entities, etc.)*
Municipalities will vary in their response. Some will be glad to have the state provide jurisdiction over this land use, and others will possibly object to increased state oversight. Some towns will want to continue their jurisdiction over shorelands and will enter into a delegation agreement with the state. A variety of businesses with shoreland property are concerned about a new regulation. The bill contains a number of "exemptions" meant to address such concerns: 1) a set of small, low impact projects that shoreland residents can do without needing a permit but would "register" the project with the state; 2) a transition period that exempts projects already substantially under way by July 1, 2014; 3) allowance for maintaining pre-existing lawns; gardens and landscaping; 4) allowance of reconstruction within the same footprint of a pre-existing building; 5) allowance of maintenance, emergency repair, repair and replacement of existing towns, state and private roads; 6) land within the shoreland area but on the non-lake side of a town or state road are not required to get a permit; 7) an exemption for downtowns, village centers and existing

industrial areas; 8) allowance for routine repair and maintenance of utility lines; and 9) mosquito control activities when a "public health emergency" is declared.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why? The Federation of Vermont Lakes and Ponds is in support of this bill as better shoreland management has been a concern of theirs for many years, as are a number of lake associations. Some shoreland owners support the bill as they are concerned about the increasing intensity of shoreland development and its impact on lake resources. Environmental groups and related NGOs will likely support the bill, as will groups such as Vt Assoc. of Planning and Development Agencies.

6.2 Who else is likely to oppose the proposal and why? People and organizations that generally oppose land use regulations will likely be opposed to the bill on property rights grounds. Some shoreland owners oppose the bill as it will require certain shoreland management standards which they don't think there is a need for. Some lakeshore residents and businesses object to additional regulation. Objections also include concern that the bill is not addressing more important lake issues such as invasive species, and is not helping to implement the Champlain phosphorus TMDL.

7. Rationale for recommendation: *Justify recommendation stated above.* The existing shoreland management strategy in Vermont, that of education, outreach and technical assistance is not resulting in adequate protection for lake shorelands. The majority of municipalities have not adopted zoning that includes lake protection measures and the majority of shoreland is developed by complete clearing down to the water's edge. Therefore statewide regulations are needed to provide adequate lake protection. The standards and regulatory program in H.526 as passed the Senate enable the state to ensure no new impact to lake resources is occurring. Outreach and technical assistance will continue to be used to encourage improvements in existing development.

8. Specific modifications that would be needed to recommend support of this bill: *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*
None. There are minor changes DEC may seek during on-going consideration of the bill, however, the bill as passed the Senate is worthy of support.

Commissioner has reviewed this document:



Date:

2/20/14

Secretary has reviewed this document:



Date:

2-21-14